



WATER RESOURCES DEPARTMENT
Art R. Chianello, P.E. • Water Resources Manager

April 1, 2016

Via U.S. Mail and E-Mail (sgmps@water.ca.gov)

California Department of Water Resources
Attn: Lauren Bisnett, Draft GSP Emergency Regulations Public Comment
P.O. Box 942836
Sacramento, CA 94236

Re: Comments of City of Bakersfield to Draft GSP Emergency Regulations

Dear Ms. Bisnett:

The City of Bakersfield ("City" or "Bakersfield") submits the following comments to the Draft Groundwater Sustainability Plan (GSP or Plan) Emergency Regulations (Regulations) issued by the State of California Department of Water Resources (DWR) on February 18, 2016.

The City is very interested in the Regulations and in the implementation of the Sustainable Groundwater Management Act (SGMA). The City holds substantial surface and groundwater rights, and utilizes such water rights to provide a drinking water supply to over 350,000 residents of Bakersfield. The City is in the process of forming the Kern River Groundwater Sustainability Agency (GSA or Agency) in coordination with the Kern Delta Water District (Kern Delta) and Improvement District No. 4 of the Kern County Water Agency (ID4) for a portion of the Kern County Subbasin (Basin Number 5-22.14, DWR Bulletin 118) within the San Joaquin Valley Groundwater Basin pursuant to the provisions of the Sustainable Groundwater Management Act (SGMA). Recently, City officials and representatives, together with Kern Delta and ID4 have been active developing the Kern River GSA. Following GSA formation, the GSA members anticipate working diligently on the GSP in support of the SGMA implementation timeline.

The City provides the following general comments regarding the Regulations, and thereafter proposes specific changes to the Regulations.

General Comments

The Regulations should be more flexible and allow for appropriate exceptions and variations from the expressed requirements of the Regulations, provided the overall objectives, goals, and requirements of SGMA are met. Local agencies and water purveyors have developed, and will likely continue to develop, creative and effective procedures, methods, plans, programs and structures for the management and

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regulation of water supplies, including groundwater supplies. The Regulations should allow and accommodate for, if not encourage, different types of strategies and plans for the sustainable management of groundwater supplies. The Regulations should not adopt a "one size fits all" approach, but should recognize and allow for differences and deviations from the requirements of the Regulations in the preparation of GSPs. The Regulations should also recognize and account for plans and projects already in place, or in the process of being developed in basins throughout the State.

Increased flexibility in the Regulations could be accomplished through relatively minor changes to the Regulations. In a number of the Regulations, for example, "shall" might be changed to "should" or "could" with reference to requirements for the contents and preparation of GSPs, to provide some measure of flexibility.

In addition, DWR should adopt a new regulation which indicates that for good cause, including due to practical, hydrological, monetary or technical factors and considerations; DWR may accept a GSP which deviates from the requirements of the Regulations, or which utilizes alternate procedures, methods or tools for the preparation and implementation of a GSP.

We similarly believe the Regulations should allow for more flexibility with regard to the deadlines for preparation and submission of GSPs and other documents and obligations. The requirements and obligations in the Regulations, and in SGMA, are all new and unfamiliar. The Regulations envision and call for a detailed, technical, time consuming and labor intensive process for developing and preparing GSPs. It may not be feasible or practical for local agencies to easily or readily comply with all of the new deadlines and requirements in the Regulations. There may also be practical, technical or monetary factors which impact the ability of a GSA, or other local agency, to comply with all of the requirements of the Regulations within the deadlines set forth in SGMA, and in the Regulations. In particular, for basins with multiple GSAs that will require an abundant effort to coordinate GSP goals and objectives across multiple GSAs, more time may likely be necessary to both effectively conduct the regional intra-basin coordination and develop a locally suitable GSP for the GSA program area.

The Regulations should therefore include a procedure to request and obtain an extension of time for any of the deadlines in the Regulations, and under SGMA. In addition, or alternatively, specific regulations could provide and allow for flexibility, and extensions of time, for various deadlines and timing requirements, without the risk of default or other adverse consequences.

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We are concerned with the definition and designation of a "Submitting Agency," (Section 357.4) as well as a "Coordinating Agency" (Section 351(i)). The Regulations should not designate a single entity or individual to be "the sole point of contact" with DWR with regard to SGMA, or a GSP. A significant number of basins in the State will likely be managed by a combination of multiple GSAs, through a combination of coordinated GSPs. Each GSA should have equal standing, and an equivalent voice and role in the implementation of a GSP and the management of groundwater resources in a basin. Designating a single entity as a representative of the basin would marginalize and devalue other GSAs, and would potentially give the representative entity too much authority, power and influence within a basin.

The Regulations should provide for a process to appeal or challenge an action or decision of DWR, or another GSA. Without such an appeal process there will be an increased risk of litigation, delay or other disputes over the Regulations, and the implementation of SGMA.

The use of the term "basin" in the Regulations is often confusing and vague. In some instances, it seems that basin refers to the area that a GSA is managing, but at other times "basin" seems to refer to a larger Bulletin 118 basin or sub-basin or unit. Several Regulations describe application and requirements for the basin, but it isn't clear if that is meant to first apply to the GSP developed by the local GSA for local management responsibilities. The Regulations should clarify when requirements apply at the local GSA level or apply at the sub-basin or basin-wide level, or both. For example, if GSAs are to develop locally focused GSPs that address local goals, objectives, criteria and have local monitoring approaches, but also have to be coordinated across the basin or sub-basin such that there is overall alignment with local plans and the basin-wide goals and objectives; then shouldn't the overall basin or sub-basin goals be developed first, or iteratively with the local GSPs? This issue of how local plans are developed that also have to be coordinated and integrated across the basin or sub-basin is the basis for our schedule concern described above.

Specific Comments

In addition to the general comments, the City provides the following specific comments and proposed changes to the Regulations.

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Section 351(i). Definitions: As indicated in the general comments, the City maintains that the Regulations should not include a reference to or definition of a "Coordinating Agency." The later reference to and definition of a "Plan Manager with in a GSA (Section 351(w)) would seem to encompass the duties and obligations of a coordinating agency, and obviate the need for the designation and definition of a "coordinating agency." Alternatively, if that term remains in the Regulations, the definition should be amended to delete the reference to a Coordinating Agency being "the sole point of reference" with DWR, and should instead indicate that more than one entity can serve and function as a coordinating agency.

Section 352.8: Data Management and Recordkeeping: This regulation should be modified to state that "(e)ach Agency shall **utilize** and implement a coordinated data management system . . ." instead of stating that each Agency shall "**develop**" and implement a coordinated data management system. Agencies should be able to use a data management system already utilized by the Agency, or developed by another entity.

Sections 353.8(a) and (b): Public Comment: This section currently states: "The Department shall accept public comment on any aspect of an Agency's decision to develop a Plan as described in Section 353.6, including all elements of the proposed Plan as it may be developed by the Agency." Section 353.8(b) indicates that there will be a 60 day comment period for an adopted plan that has been accepted by DWR for review, but the Section does not contain a corresponding deadline for comments on an Agency's "decision" to adopt a plan, or in connection with the "Initial Notification" required within 30 days of Agency's decision to develop a Plan. This section should provide for a 60 day comment period following DWR's posting of the notice referred to in Section 353.6.

Section 353.8(c): Public Comment: Since members of the public and entities or organizations without scientific or technical expertise may want to comment on "any proposed or adopted Plan," we question whether commenters should be required to "rely on similar scientific and technical information, including the reliance upon the best available information and best available science."

Section 354: Introduction to Plan Contents: Instead of stating that "(t)his Article describes the **required** contents of Plans, . . ." this section should indicate that the Article "describes the **recommended** contents of plans." As indicated in the general comments, the Regulations should account and allow for more flexibility and variations in the preparation of Plans.

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Section 354.14: Hydrogeologic Conceptual Model: This section states that each Plan "shall include a hydrogeologic conceptual model of the basin" which includes all of the information and data listed in the regulation. As indicated in the general comments, an Agency should not be absolutely required to include or utilize a particular model or type of model for a basin. The Regulations instead should allow for exceptions and alternatives to this requirement. The overall purpose of developing the Conceptual Model is to provide an understanding of the basin, how it works, what are its characteristics and properties, etc.

Section 354.44. Projects and Management Actions: This section should be modified to state that "(e)ach Plan shall include a description of the projects and management actions **adopted by the Agency or a member of the Agency** to meet measurable objectives and prevent undesirable results."

Section 354.8(a), Description of Plan Area: These Regulations contain a number of references to land use plans. Section 354.8(a)(4), for example, states that a Plan must include "an assessment of how implementation of the plan may affect applicable land use plans," and Section 354.8(a)(7) states that a Plan must describe "how implementation of existing land use plans may affect the ability of the Agency to achieve sustainable groundwater management, and how the Plan addresses potential effects." The City is concerned that the references to and requirements regarding land use plans may negatively impact the land use planning authority of cities and counties, contrary to the express requirements of SGMA. Specifically, Water Code Section 10726.8(f) provides that "(n)othing in this chapter or a groundwater sustainability plan shall be interpreted as superseding the land use authority of cities and counties, including the city or county general plan, within the overlying basin."

Section 355.2: Department Review of Initial Adopted Plan: This Section indicates that DWR "shall evaluate a Plan within two years of its submittal date." That lengthy time period for review may be necessary, in light of the complexity and requirements for the Plans; but this section, or the Regulations, should address how an Agency should manage groundwater resources while its Plan is going through the lengthy DWR review process. Presumably an Agency could not implement the Plan without DWR approval, but that could also create problems in the period following submittal of a Plan but prior to DWR approval. Conditions in a basin could also potentially change over the two year review period, so that the information in a Plan may not be up to date or effective by the time it is approved by DWR. The Regulations could address those concerns by allowing an Agency to update or revise a Plan while it is going through the DWR review process. The Regulations could additionally, or alternatively indicate that Plans will be evaluated by DWR in light of conditions in the basin as of the date of submittal of the

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Plan to DWR. The two year review period suggested by DWR also points to just how complex this process to develop a GSP is. If DWR is considering needing up to two years to review GSPs, please consider how much time may be required to actually develop the GSP, especially considering that these will all be first-time plans with no predecessors.

Section 355.10. Resolution of Conflicts by Department: Section 355.10(a) states that "(d)isputes within a basin shall be the responsibility of the Coordinating Agency or other entities responsible for managing Plans and alternatives within that basin." We are very concerned that this section could be construed to grant significant powers, including adjudicatory powers, to a "Coordinating Agency." This section could additionally be construed to give a "Coordinating Agency" authority to decide and resolve any dispute within a basin involving water supplies, including disputes that otherwise could be brought before a court or the State Water Resources Control Board for resolution. This section should therefore be modified to state the following, or something similar: **"All Agencies within a basin, and other entities responsible for managing Plans and alternatives within a basin, shall use their best efforts to attempt to informally resolve any disputes involving the development, approval and implementation of a Plan."**

This section also indicates that DWR will "revolve" a wide range of other disputes. The Regulations should confirm and clarify that DWR does not have exclusive jurisdiction and authority to resolve disputes involving groundwater, water supplies or projects and plans that impact such water resources. Instead, the usual forums (courts, State Board) could still be invoked and utilized. As indicated in the general comments, the Regulations should additionally provide for a method to appeal a decision by DWR resolving or addressing the various disputes listed in this section.

356.4: Annual Report: This section indicates that following the adoption of a Plan, Agencies must submit detailed reports including a wide range of detailed and technical information. The City believes it may be burdensome, and unnecessary, to submit such detailed annual plans following submittal of a very detailed Plan. The reports should not have to be submitted every year, buy only every two to three years. The City points out that Urban Water Management Plans are only required to be prepared every five years.

An Agency also should not be required to submit the detailed report after it adopts a Plan, but only after DWR approves the Plan.

Section 356.12. Amendments and Modifications to Plan: This section states that “(a)ny amendment or other modification to a Plan shall be evaluated by the Department for consistency with the requirements of the Act and of this Subchapter.” This section should be modified to indicate that DWR shall only be required to evaluate “**substantial**” or “**formal**” amendments or modifications to a Plan. The section could otherwise significantly constrain an Agency’s ability to make minor changes to or deviations from a Plan in order to effectively manage a basin. Absent the requested modification, an Agency implementing a Plan could also be subject to frequent legal challenges based on claims that even a minor deviation in the Plan would require DWR review and approval. This section, if not modified, could significantly limit the ability of an Agency to efficiently and effectively manage a basin, particularly when faced with new and unforeseen circumstances.

Based on the same concerns and considerations, the section should also provide a time frame, or deadline for DWR’s review of amendments and modification to Plans.

Sections 357.4(b), c) and (d): Intrabasin Coordination: These sections require the identification of a “Submitting Agency” which shall be the single point of contact with the Department, and which will receive “Plan amendments, supporting information, all monitoring data and other pertinent information, along with annual reports and periodic evaluations,” and will thereafter compile this information and produce a “single report synthesizing and summarizing that information.” The City is concerned that this section would give certain Agencies too much power and authority over groundwater conditions and use in a basin, at the expense of other Agencies and entities with water management responsibility. The Regulations already provide that Agencies must submit a single Plan for a basin, so this section does not seem necessary. Multiple, separate Agencies in a basin must additionally have the opportunity and right to contact and work with DWR. Multiple Agencies should also have the right and opportunity to work collectively towards the preparation and submission of a Plan for a basin, and other related documents, instead of having to designate a single Agency to undertake those tasks.

Modification or elimination of this Section is also necessary to avoid inevitable disputes within basins and among multiple Agencies over which Agency should act as the “Submitting Agency.”

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358.4. Alternatives to Groundwater Sustainability Plans. This section, which indicates that a "local agency" may submit an "alternative" to a Plan, should be modified to indicate that an "Agency," in addition to a "local agency," may submit an alternative to a Plan to DWR.

Conclusion

We thank you for your review and consideration of our comments.

Sincerely,

A handwritten signature in blue ink that reads "Arthur Chianello For". The signature is stylized and cursive.

Arthur Chianello, P.E.

Water Resources Manager, City of Bakersfield